In the Supreme Court of the United States

OCTOBER TERM, 1971

No 71-433

WILLIAM B. RICHARDSON, PETITIONER

v.

UNITED STATES OF AMERICA; JOHN CONNALLY, SECRETARY OF THE TREASURY; S. S. SOKOL, COMMISSIONER OF ACCOUNTS

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

Petitioner filed this suit in the United States District Court for the Western District of Pennsylvania seeking a declaratory judgment that certain sections of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a *et seq.*) are repugnant to Art. I, Sec. 9, Cl. 7 of the Constitution of the United States,[1] and a writ of mandamus ordering the Secre-

[1] That clause provides: "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

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tary of the Treasury and his subordinate officials to publish a statement of expenditures by the Central Intelligence Agency. He alleged that the Act's provision for financing the C.I.A. through appropriations to other agencies [2] "prevent[s] the receipts and expenditures of the Central Intelligence Agency from becoming available" to those charged with preparing the statement of expenditures of public funds and "forces on the People an irregular statement and account" (Pet. App. 6a). The district court declined to convene a three-judge court. Relying upon the disposition of a previous suit by petitioner [3] and *Flast* v.

[2] 50 U.S.C. 403f provides:

"In the performance of its functions, the Central Intelligence Agency is authorized to—

"(a) Transfer to and receive from other Government agencies such sums as may be approved by the Bureau of the Budget, for the performance of any of the functions or activities authorized under sections 403 and 405 of this title, and any other Government agency is authorized to transfer to or receive from the Agency such sums without regard to any provisions of law limiting or prohibiting transfers between appropriations. Sums transferred to the Agency in accordance with this paragraph may be expended for the purposes and under the authority of sections 403a–403c, 403e–403h, 403j of this title without regard to limitations of appropriations from which transferred * * *."

[3] Petitioner brought an identical suit in 1967 alleging jurisdiction under 28 U.S.C. 1331. The district court dismissed the complaint on the ground that petitioner lacked standing. *Richardson* v. *Sokol*, 285 F. Supp. 866 (W.D. Pa.). The court of appeals, in affirming the district court, did not determine the standing question, but held that petitioner's complaint failed to state the requisite jurisdictional amount. *Richardson* v. *Sokol*, 409 F. 2d 3 (C.A. 3) certiorari denied, 396 U.S. 949.

Cohen, 392 U.S. 83, the court dismissed the complaint on the ground that petitioner lacked standing to raise the issue, and that whether C.I.A. operational expenditures should be made public is a non-judiciable political question (Pet. App. 18a–20a).

Petitioner appealed and argued the case pro se before the United States Court of Appeals for the Third Circuit on June 25, 1971. Thereafter the court appointed counsel as *amicus curiae* (Pet. App. 21a–22a), who filed a brief on October 18, 1971 supporting petitioner's position. The government's response is due to be filed by November 15, 1971. The court has not yet indicated whether it will schedule additional oral argument.

Petitioner has not shown that this case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court—the standard under Rule 20 of this Court's rules for certiorari before judgment. Petitioner argues that immediate review is necessary to permit a decision before the Secretary of the Treasury publishes his next report in January 1972. But the practice of which petitioner complains has been specifically authorized by Congress and has been followed for 22 years (Pet. 9); resolution of whether the practice will be followed for one more year is not so "imperative" that the normal appellate processes should be bypassed. If petitioner believes there is a need for swift action, he is not precluded from attempting to convince the court of appeals of this. See *Aaron* v. *Cooper*, 357 U.S. 566, 567.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

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